

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-82-S – ORDER NO. 2019-____
_____, 2019**

IN RE: Application of Palmetto Wastewater)	
Reclamation, LLC for Adjustment of)	ORDER APPROVING INCREASE
Rates and Charges for, and the)	IN RATES AND CHARGES,
Modification of Certain Terms and)	RATE SCHEDULE
Conditions Related to, the Provision of)	MODIFICATIONS, AND
<u>Sewer Service</u>)	SETTLEMENT AGREEMENT

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Application of Palmetto Wastewater Reclamation, LLC (“PWR” or “the Company”) for an increase in rates and charges for the provision of sewer service and the modification of certain terms and conditions related to the provision of such service. The Application was filed on November 6, 2018, pursuant to S.C. Code Ann. § 58-5-240 (2015) and S.C. Code Ann. Regs. 103-512.4.A and 103-503 (2012) and utilized a test year ending August 31, 2018.

By letter dated November 19, 2018, the Commission Clerk’s Office transmitted to PWR a prepared Notice of Filing and Hearing. The Notice of Filing and Hearing described the nature of the Application, included a comparison of current and proposed rates for residential, mobile home, and commercial customers, and advised all interested persons desiring to participate in the proceedings and hearing of the manner and time in which to file appropriate pleadings for inclusion in the proceedings as a party of record. The Clerk’s Office instructed PWR to publish the Notice of Filing and Hearing in newspapers of general circulation in the areas affected by the Application and to notify directly by U.S. Mail, or electronic mail for those customers who have agreed to

receive notices via electronic mail, each customer affected by the Application by mailing each customer a copy of the Notice of Filing and Hearing. On December 17, 2018, the Company filed an Affidavit of Publication demonstrating that the Notice of Filing and Hearing had been duly published and a Certificate demonstrating that a copy of the Notice of Filing and Hearing had been mailed to each affected customer.

As reflected in the Notice of Filing and Hearing, the Company proposed new monthly sewer service rates of \$41.18 for residential customers, \$30.74 for mobile homes, and \$41.18 per single family equivalent (“SFE”) as a minimum for commercial customers. By its Application, the rates sought by the Company would permit it the opportunity to earn \$615,797 in additional annual revenues. The Application also sought a modification of its rate schedule to include a provision authorizing the Company to impose a charge not to exceed \$250.00 upon customers found to have tampered with or damaged its facilities or equipment and to limit liability to customers for damages arising out of an interruption of service or a failure to provide service to remedies provided for under 10 S.C. Code Regs. 103-517 (2012).

No petition to intervene was filed in this case in response to the Notice of Filing and Hearing. Pursuant to S.C. Code Ann. § 58-4-10(B) (Supp. 2018), the South Carolina Office of Regulatory Staff (“ORS”) is a party of record in this proceeding.

On April 2, 2019, PWR and ORS (the “Settling Parties”) filed a Settlement Agreement with the Commission. The Settling Parties represented to the Commission that they had negotiated a resolution to the issues presented in this case. ORS stated in the Settlement Agreement and at the scheduled hearing in this matter that the settlement serves the public interest. The Settlement Agreement states that the Settling Parties view the terms thereof to be just and reasonable. Among others, these terms provide for a monthly residential service rate of \$37.92, a monthly mobile home

service rate of \$28.30, and a monthly commercial service rate of \$37.92 per SFE, with commercial customers having a minimum rating of one SFE, additional annual revenues of \$327,548, a return on rate base of 7.81% based upon a return on equity (“ROE” or “cost of equity”) of 9.93% and a capital structure of 55% equity and 45% debt, all of which result in an operating margin of 14.56%. Most prominent among the disputed issues between the parties that is resolved by the Settlement Agreement in this case is a resolution with respect to the effect the Federal Tax Cuts and Jobs Act of 2017 should have on the Company and its customers, which resolution provides for a reduction in the agreed monthly service rates described above for a period of three (3) years.¹ In addition, the Settlement Agreement allows the Company to recover not more than \$160,000 in rate case expenses amortized over two years, recognizes a post-test year reduction in the number of the Company’s equivalent residential customers, and adopts the modifications to the terms and conditions of service proposed by PWR.

II. TESTIMONY RECEIVED FROM THE COMPANY, THE OFFICE OF REGULATORY STAFF, AND PUBLIC WITNESSES

A public hearing was held in the offices of the Commission on April 8, 2019, beginning at 10:00 a.m., to receive testimony from the Settling Parties and any public witnesses. The Honorable Comer H. “Randy” Randall, Chairman of the Commission, presided. PWR was represented by John M.S. Hoefer, Esquire, and Benjamin P. Mustian, Esquire. ORS was represented by Andrew M. Bateman, Esquire, and Jenny R. Pittman, Esquire.

¹ For a period of thirty-six (36) months from and after the effective date of an order approving the parties’ settlement agreement, these monthly service rates (or any other rate approved by the Commission in the interim) will be reduced by \$0.34 per residential, mobile home, and commercial (per SFE) customer as a term of the Settlement Agreement. This reduction terminates with the Company’s first billing for the thirty-seventh (37th) month following the effective date of an order approving this settlement.

No public witness appeared to testify at any time during the hearing. At the beginning of the hearing, the Commission received and accepted into the record the Settlement Agreement² as Hearing Exhibit 1. Under the terms of the Settlement Agreement, the pre-filed direct testimonies (and, where applicable, exhibits) of PWR witnesses Bryan D. Stone, Chief Operating Officer of PWR, Mark S. Daday, President and Chief Financial Officer of PWR,³ Andrena Powell-Baker, Senior Manager of Community Relations and Development for PWR, Donald J. Clayton, Principal in charge of Management Consulting at Tangibl Group, Inc., and Harold Walker, III, Manager for Financial Studies of Gannett Fleming Valuation and Rate Consultants, LLC, and the pre-filed rebuttal testimonies (and where applicable, exhibits) of Mr. Stone, Mr. Daday and Mr. Walker were stipulated into the record. Similarly, under the terms of the Settlement Agreement, the pre-filed direct and surrebuttal testimonies and exhibits of ORS witnesses Christina L. Seale, a Senior Auditor employed by ORS, Matthew P. Schellinger, II, a Regulatory Analyst employed by ORS, Anthony Sandonato, a Regulatory Analyst employed by ORS, and David C. Parcell, Principal and Senior Economist of Technical Associates, Inc. were also stipulated into the record.

Counsel for ORS, Mr. Bateman, made a statement at the beginning of the hearing in which he apprised the Commission that ORS sought approval of the Settlement Agreement, as amended, as being a fair resolution of the disputed issues in the case and that the terms and conditions thereof were in the public interest. Mr. Bateman informed the Commission that, as a result of its examination and inspections, ORS had determined that PWR was in compliance with all rules and regulations of the Commission, was not the subject of any environmental regulatory enforcement

² By consent, a typographical error in paragraph 2 on page 3 of the Settlement Agreement, as filed on April 2, 2019, was corrected and a corrected Settlement Agreement was submitted into evidence.

³ By agreement of the parties, and with the approval of the Commission, Mr. Daday's pre-filed direct and rebuttal testimonies and exhibits were adopted by Mr. Stone.

actions, was receptive of and responsive to customer concerns and needs, provided excellent customer and utility service, and, ORS believes it has been transparent in its dealings with both customers and ORS.

By agreement of the parties, and with the Commission's approval, Mr. Clayton, Mr. Walker, and Mr. Parcell were excused from attending the hearing and their verified testimonies were admitted into the record of evidence. Also by agreement of the parties, and again with the approval of the Commission, the Company and ORS presented their witnesses in panels.

Company witnesses Stone and Powell-Baker were sworn in and gave their direct and rebuttal testimonies and their proposed exhibits were accepted into the record of evidence. Thereafter, these witnesses were examined by the Commission. ORS witnesses Seale, Sandonato, and Schellinger were then sworn in and gave their direct and surrebuttal testimonies and their exhibits were accepted into the record of evidence. Under examination by the Commission, the ORS witnesses supported the Settlement Agreement, which resolves the following disputed issues between the Settling Parties:

1. The parties disagreed on the effect of the Federal Tax Cuts and Jobs Act of 2017. Under the terms of the Settlement Agreement, the reduction in the Federal corporate income tax effective January 1, 2018, is recognized taking into account the Company's increases in expenses since that date and amortizing the amount of that effect over a three-year period (as described in n.1, above).
2. The parties disagreed regarding the Company's capital structure. Under the terms of the Settlement Agreement, the parties adopted a hypothetical capital structure of 55% equity and 45% debt instead of the Company's actual capital structure as of August 31, 2018 of approximately 59.72% equity and 40.28% debt.

3. The parties disagreed regarding the Company's weighted average cost of debt. Under the terms of the Settlement Agreement, the weighted average cost of debt of 5.23% is adopted.
4. The parties disagreed regarding an appropriate ROE for PWR. The Company proposed a 10.75% ROE while ORS proposed a ROE of 9.6% based upon a range of between 9.2% and 10.00%. The Settlement Agreement adopts a ROE of 9.93%.
5. The parties disagreed regarding allowable rate case expenses. The Company sought to include approximately \$14,580 in rate case expense associated with work performed by its outside rate consultant that involved a test year ending May 30, 2018. ORS proposed to exclude that amount because the test year proposed in the Application ends August 31, 2018. The Settlement Agreement adopts total rate case expenses of \$160,000, amortized over two years.
6. The parties disagreed regarding the Company's applicable number of equivalent residential connections ("ERCs"). The Company sought to reflect for ratemaking purposes a post test-year reduction of 54 ERCs. The Settlement Agreement adopts the Company's proposal.⁴

III. FINDINGS OF FACT

⁴ At the hearing, the Parties were unable to accurately explain a discrepancy between the number of customer accounts in the Company's Application and the number in ORS witness Anthony Sandonato's testimony. ORS filed a letter with this Commission on April 19, 2019 updating ORS's position to the number included in PWR's Application of 1,699 customer accounts.

Based upon the Application, the Settlement Agreement, the testimony and exhibits received into evidence at the hearing, and the entire record of these proceedings, the Commission makes the following findings of fact:

1. By statute, the Commission is vested with jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the duty, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State. S.C. Code Ann. § 58-5-210 (2015). The Company is engaged in the business of providing wastewater collection and treatment services to the public for compensation in portions of Lexington and Richland counties and is therefore a public utility subject to the Commission's jurisdiction.

2. The Company is lawfully before the Commission on an application for rate relief and modifications to certain terms and conditions of service pursuant to S.C. Code Ann. § 58-5-240 (A) (2015) and S.C. Code Ann. Regs. 103-503 and 103-512.4.A (2012).

3. The test year for use in this proceeding is September 1, 2017 to August 31, 2018.

4. The Commission will use rate of return on rate base as a guide in determining the lawfulness of the Company's rates and in the fixing of just and reasonable rates.

5. The determination of return on rate base requires three components. These are the Company's capital structure, cost of equity, and the cost of debt.

6. In the return on rate base determination, it is appropriate to use a capital structure of 55% equity and 45% debt for PWR.

7. A fair return on equity for PWR is 9.93%.

8. Using the capital structure of 55% equity and 45% debt, the cost of debt of PWR of 5.23%, and a return on equity of 9.93% produces a rate of return on rate base of 7.82%.

9. The Company, by its Application originally sought an increase in its annual sewer service revenues of \$615,797 based upon a proposed monthly sewer service charge of \$41.18 for residential customers, \$41.18 per single family equivalent (as a minimum) for commercial customers, and \$30.74 for mobile homes.

10. The Company submitted evidence in this case with respect to PWR's revenues, expenses and rate base using a test year consisting of the twelve (12) months ended August 31, 2018. ORS proposed adjustments to the test year revenues, expenses, and rate base submitted by PWR. The Company accepted most of the ORS adjustments, with the disputed adjustments being those described above. The Settlement Agreement is based upon the same test year and reflects the compromises of the only parties of record with respect to these disputed adjustments.

11. The Settlement Agreement reached by the Settling Parties, which resolves the issues in this proceeding, was filed by ORS on April 2, 2019.⁵

12. Under the terms of the Settlement Agreement, all Parties stipulated and agreed to a rate of \$37.92 per month for residential customers, a minimum commercial rate of \$37.92 per month for each SFE, and a mobile home rate of \$28.30 for mobile homes. These monthly rates, and any different rate which may hereafter be approved by the Commission following a successful rate relief application should one be sought by the Company, will be subject to a reduction \$0.34 cents for a period of thirty-six months following the effective date of this Order. Thus, based on the rates approved hereby, residential customers will pay \$37.58 per month, commercial customers

⁵ Appended to the Settlement Agreement are "Settlement Attachment A", which details the accounting adjustments, operating experience, revenues, return on rate base, and resulting operating margin and "Settlement Attachment B" setting forth the proposed rate schedule.

will pay \$37.58 per month per SFE, and mobile home customers will pay \$27.96 during this three-year period, assuming the Company's rates are not approved to be increased by the Commission during this three-year period. Thereafter, no reduction in the Company's rates shall apply.

13. The Settlement Agreement provides for an increase in revenue, after accounting and pro forma adjustments, of \$327,548, based upon a proposed monthly sewer service charge of \$37.92 for residential customers, \$28.30 for mobile home customers, and \$37.92 per single family equivalent (as a minimum) for commercial customers. The return on rate base provided for is 7.81% based upon a return on equity of 9.93% and a capital structure of 55% equity and 45% debt. This results in an operating margin of 14.56%. See S.C. Code Ann. § 58-5-240(H) (2015).

14. After careful review and consideration by this Commission of the Settlement Agreement, the evidence contained in the record of this case, including the testimonies of the witnesses and hearing exhibits, the Commission finds and concludes that the Settlement Agreement results in just and reasonable rates and charges for the provision of sewer services. The Commission finds that PWR has invested approximately \$6.8 Million in plant, equipment and facilities, since the Company's last rate relief proceeding. The rate schedule agreed to by the Parties in the Settlement Agreement is hereby adopted and attached to this Order as part of Order Exhibit 1. The rates and charges in the rate schedule are just and reasonable, fairly distribute the costs of providing service as reflected in the Company's revenue requirement, and allow PWR to continue to provide its customers with adequate sewer service. Further, the agreed upon rates allow the Company an opportunity to earn a reasonable return on its investment. We find that the rate schedule agreed to by the Settling Parties provides terms and conditions for sewer service that are also just and reasonable. The Commission finds that the proposed modifications and additions to the terms and conditions of the Company's sewer service, specifically the language imposing a

tampering charge and providing for a limitation of liability, are appropriate, just and reasonable and are therefore approved.

IV. EVIDENCE AND CONCLUSIONS

EVIDENCE FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW 1-3

The Company is a public utility subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. §§ 58-3-140(A) (2015) and 58-5-210 (2015). The Commission requires the use of an historic twelve-month test period under S.C. Code Ann. Regs. 103-823.A(3) and 103-512.4(A)(2012). These findings of fact and conclusions of law are informational, procedural and jurisdictional in nature and are not contested by any party of record in this proceeding.

EVIDENCE FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW 4-15

The Commission last approved an increase in rates for PWR's customers in Order No. 2014-752 issued September 18, 2014, in Docket No. 2014-69-S. On November 6, 2018, PWR filed its application seeking an increase in annual revenues of \$615,797. The Company and ORS submitted evidence in this case with respect to revenues and expenses using a test year for the twelve months ending August 31, 2018. The Settlement Agreement filed by the Settling Parties on April 2, 2019, is based upon the test year ending August 31, 2018, as proposed in the application and provides for an increase in annual service revenues of \$327,548, resulting in an operating margin of 14.56% based upon the Company's revenues and allowable expenses.

a) Basis for Rate Relief

In his pre-filed direct testimony, Company witness Clayton testified that the Company had experienced an increase in operating expenses of \$64,000 since the last rate increase for the Company and noted a significant increase in other expenses, primarily property taxes associated

with capital improvements. (Clayton Direct, p. 6, ll. 5-12). Company witness Daday testified that total investments by PWR since its last rate relief proceeding were approximately \$6.8 Million, resulting in an annual increase in property taxes of approximately \$376,000. (Daday Direct, p. 8, ll. 5-10). Although, as a result of the Settlement Agreement the increase in allowable expenses is less than initially asserted by the Company, PWR's expenses have increased significantly and the Company is experiencing an operating margin of 8.33% (which is slightly more than half of the operating margin previously approved for it by this Commission) and a return on rate base of only 5.20% based upon the agreed upon adjustments set forth in Settlement Attachment A without rate relief.

b) Rate-setting Methodology

The Company requested rate base and rate of return treatment for its Application App. p. 10 ¶ 13. ORS did not oppose the Company's request in this regard. The ratemaking methodology to be used by the Commission in setting just and reasonable rates is a matter of our discretion and we have "wide latitude to determine an appropriate rate-setting methodology. *Heater of Seabrook v. Public Serv. Comm'n of South Carolina*, 324 S.C. 56, 64, 478 S.E.2d 826, 830 (1996). Although S.C. Code Ann. § 58-5-240(H) (2015) directs the Commission to specify an allowable operating margin in all water and wastewater orders, "that directive does not mean that operating margin must be used in determining a fair rate of return." *Id.* Operating margin "is less appropriate for utilities that have large rate bases and need to earn a rate of return sufficient to obtain the necessary equity and debt capital that a larger utility needs for sound operation." *Id.* According to the Application, PWR's per books total rate base was \$9,945,657. *See* Application Exhibit B, Schedule F. Even after the agreed upon adjustments set out in Attachment A to the Settlement Agreement, the Company's rate base is \$9,780,768. This is a large rate base and the Commission finds that it

warrants use of the rate of return on rate base to ensure that PWR's ability to earn a fair and reasonable return on its investment may be met.

c) Approved Rates, Return on Equity, and Resulting Operating Margin

The parties of record have stipulated in the Settlement Agreement that the rates, terms, and conditions of service are just and reasonable. The agreed upon return on equity, although lower than that sought by PWR, is within a range of returns testified to by ORS's cost of capital witness. The parties of record have accepted all ORS adjustments except those which were disputed by PWR but have been resolved under the terms of the Settlement Agreement as described above. The rates agreed to in the Settlement Agreement generate a return on rate base of 7.81% and result in an operating margin of 14.56% as shown in Attachment A thereto.

d) Additions to and Changes in the Terms and Conditions of Service

The Settling Parties proposed in Attachment B to the Settlement Agreement modifications to the language of the current rate schedule to add (1) a new Section 12 providing for a tampering charge of up to \$250 and (2) a new Section 13 limiting the Company's liability in circumstances where service is interrupted or there is a failure to furnish service to remedies provided for in the Commission's rules and regulations. As noted in the Company's Application, these provisions have been approved by the Commission for other jurisdictional sewer utilities. In the direct testimony of ORS witness Sandonato, ORS accepted and recommended that the Commission approve these proposed modifications and the Settlement Agreement simply recognizes this acceptance. Thus, these modifications are appropriate for incorporation into the Company's rate schedule.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement with accompanying attachments is attached hereto as Order Exhibit 1 and is incorporated into and made a part of this Order by reference.

2. The Settlement Agreement is adopted by this Commission and is approved as it produces rates that are just and reasonable and in the public interest as well as authorizing a reasonable return on equity for the Company.

3. The rates imposed shall be those rates agreed upon in the Settlement Agreement as shown in Settlement Agreement Attachment B and shall be effective for service rendered by the Company on and after the date of this order.

4. The additional revenues that the Company is entitled an opportunity to earn results in an operating margin of 14.56 %.

5. The Company's books and records shall continue to be maintained according to the NARUC Uniform System of Accounts.

6. The Company shall maintain a performance bond for sewer operations in the amount of \$350,000 in compliance with S.C. Code Ann. § 58-5-720 (2015).

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

ATTEST:

Comer H. "Randy" Randall, Chairman

Justin T. Williams, Vice-Chairman